

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9**

In the Matter of

THE PAINTING CONTRACTOR, LLC

and

**INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, AFL-CIO, CLC,
DISTRICT COUNCIL 6**

**Cases 09-CA-248716
09-CA-250898**

**RESPONDENT'S REPLY TO OPPOSITION TO RESPONDENT'S MOTION FOR
SUMMARY JUDGMENT AND BRIEF IN SUPPORT**

The General Counsel's Opposition to Respondent's Motion for Summary Judgment purports to point out existing issues of material fact. However, the "issues of material fact" it points to are only disputes as to the *legal* consequences of the undisputed facts.

For instance, taking the allegations in the General Counsel's Complaint about Jack Varney's statement to TPC employees, and Respondent's discussion of the same in its Motion for Summary Judgment, it is clear that the only dispute is the legal significance of the statement and not the statement itself.

Likewise, the allegations on Respondent's withdrawal from the Association (Compl. ¶¶ 7(b-e) and 8(a)(i-ii)) that the General Counsel claims are disputed only involve legal disputes. These disputes turn entirely on the legal significance of the Association and Union reaching an extension agreement (the condition subsequent for Respondent's withdrawal from the Association) and an oral tentative agreement at the same meeting.

The General Counsel argues that factual disputes remain on "the ultimate question of whether and when Respondent's purported attempt to withdraw from the association took effect." (Opposition, p.3). This, however, is not a question of fact but a question of law. It is undisputed

that on May 17, 2019, Respondent sent the Union and the Association notice, per Article XIX of the then effective collective bargaining agreement, that it would withdraw from the Association if a third extension was granted. It is also undisputed that on May 28, 2019, the Association and the Union reached a third extension and that on the same day, Respondent notified the Association and the Union of its withdrawal. Again, the parties dispute whether the withdrawal was effective. They do not dispute the facts leading up to Respondent's withdrawal.¹

In short, the only disputes at issue are whether Respondent's withdrawal was effective and whether Varney's statement constitutes an unfair labor practice. These are both legal disputes.

Finally, the argument that Respondent "equivocated" is a non-issue. Respondent's withdrawal could not be effective *unless and until* the moment the Association and the Union executed the third extension. The General Counsel does not and cannot argue that equivocation, forward from the moment the third extension was executed, existed. To the contrary, it is undisputed that on the same day the Association and Union agreed to a third extension, which triggered the withdrawal, Respondent unequivocally informed the Union that it would now bargain for itself (Respondent's Motion For Summary Judgment, Greenberg Aff. ¶ 8, Exh. A; ¶ 9, Exh B), and did not participate in group bargaining after that.

The only disputes at issue are the legal consequences of the undisputed facts. Accordingly, for the reasons in its Motion for Summary Judgment and in this Reply, summary judgment should be granted by the Board in Respondent's favor and the Consolidated Complaint should be dismissed in its entirety.

¹ Accordingly, the case relied on by General Counsel, *Dependable Tile*, 268 NLRB 1147 (1984), is inapposite, as it is undisputed that Respondent did not continue to participate in group bargaining after the third extension was executed, which is when its withdrawal became effective.

Respectfully submitted,

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Dated: December 21, 2020

CERTIFICATE OF SERVICE

This is to certify that on December 21, 2020, a copy of the foregoing Motion for Summary Judgment was served, via electronic mail where possible and first class mail, postage prepaid upon the following:

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